

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Unified Code of Corrections is amended by
5 changing Section 5-2-4 as follows:

6 (730 ILCS 5/5-2-4) (from Ch. 38, par. 1005-2-4)

7 Sec. 5-2-4. Proceedings after Acquittal by Reason of
8 Insanity.

9 (a) After a finding or verdict of not guilty by reason
10 of insanity under Sections 104-25, 115-3 or 115-4 of The Code
11 of Criminal Procedure of 1963, the defendant shall be ordered
12 to the Department of Human Services for an evaluation as to
13 whether he is subject to involuntary admission or in need of
14 mental health services. The order shall specify whether the
15 evaluation shall be conducted on an inpatient or outpatient
16 basis. If the evaluation is to be conducted on an inpatient
17 basis, the defendant shall be placed in a secure setting
18 unless the Court determines that there are compelling reasons
19 why such placement is not necessary. If the defendant's
20 conduct that was charged involved a first degree murder, an
21 attempt to commit first degree murder, or a second degree
22 murder, then the court shall order inpatient treatment. After
23 the evaluation and during the period of time required to
24 determine the appropriate placement, the defendant shall
25 remain in jail. Upon completion of the placement process the
26 sheriff shall be notified and shall transport the defendant
27 to the designated facility.

28 The Department shall provide the Court with a report of
29 its evaluation within 30 days of the date of this order. The
30 Court shall hold a hearing as provided under the Mental
31 Health and Developmental Disabilities Code to determine if

1 the individual is: (a) subject to involuntary admission; (b)
2 in need of mental health services on an inpatient basis; (c)
3 in need of mental health services on an outpatient basis; (d)
4 a person not in need of mental health services. The Court
5 shall enter its findings.

6 If the defendant is found to be subject to involuntary
7 admission or in need of mental health services on an
8 inpatient care basis, the Court shall order the defendant to
9 the Department of Human Services. The defendant shall be
10 placed in a secure setting unless the Court determines that
11 there are compelling reasons why such placement is not
12 necessary. Such defendants placed in a secure setting shall
13 not be permitted outside the facility's housing unit unless
14 escorted or accompanied by personnel of the Department of
15 Human Services or with the prior approval of the Court for
16 unsupervised on-grounds privileges as provided herein. Any
17 defendant placed in a secure setting pursuant to this
18 Section, transported to court hearings or other necessary
19 appointments off facility grounds by personnel of the
20 Department of Human Services, shall may be placed in security
21 devices or otherwise secured during the period of
22 transportation to assure secure transport of the defendant
23 and the safety of Department of Human Services personnel and
24 others. These security measures shall not constitute
25 restraint as defined in the Mental Health and Developmental
26 Disabilities Code. If the defendant is found to be in need of
27 mental health services, but not on an inpatient care basis,
28 the Court shall conditionally release the defendant, under
29 such conditions as set forth in this Section as will
30 reasonably assure the defendant's satisfactory progress and
31 participation in treatment or rehabilitation and the safety
32 of the defendant and ~~er~~ others. If the Court finds the
33 person not in need of mental health services, then the Court
34 shall order the defendant discharged from custody.

1 (1) Definitions: For the purposes of this Section:

2 (A) "Subject to involuntary admission" means: a
3 defendant has been found not guilty by reason of
4 insanity; and

5 (i) who is mentally ill and who because of his
6 mental illness is reasonably expected to inflict
7 serious physical harm upon himself or another in the
8 near future; or

9 (ii) who is mentally ill and who because of
10 his illness is unable to provide for his basic
11 physical needs so as to guard himself from serious
12 harm.

13 (B) "In need of mental health services on an
14 inpatient basis" means: a defendant who has been found
15 not guilty by reason of insanity who is not subject to
16 involuntary admission but who is reasonably expected to
17 inflict serious physical harm upon himself or another and
18 who would benefit from inpatient care or is in need of
19 inpatient care. It also includes a person whose conduct
20 for which a disposition under this Section was ordered
21 involved a first degree murder, an attempt to commit
22 first degree murder, or a second degree murder.

23 (C) "In need of mental health services on an
24 outpatient basis" means: a defendant who has been found
25 not guilty by reason of insanity who is not subject to
26 involuntary admission or in need of mental health
27 services on an inpatient basis, but is in need of
28 outpatient care, drug and/or alcohol rehabilitation
29 programs, community adjustment programs, individual,
30 group, or family therapy, or chemotherapy.

31 (D) "Conditional Release" means: the release from
32 either the custody of the Department of Human Services or
33 the custody of the Court of a person who has been found
34 not guilty by reason of insanity under such conditions as

1 the Court may impose which reasonably assure the
2 defendant's satisfactory progress in treatment or
3 habilitation and the safety of the defendant and others.
4 The Court shall consider such terms and conditions which
5 may include, but need not be limited to, outpatient care,
6 alcoholic and drug rehabilitation programs, community
7 adjustment programs, individual, group, family, and
8 chemotherapy, random testing to insure the defendant's
9 timely and continuous taking of any medicines prescribed
10 to control or manage his or her conduct or mental state,
11 periodic checks with the legal authorities and/or the
12 Department of Human Services. The report of the
13 evaluation as to whether the defendant is subject to
14 involuntary admission or in need of mental health
15 services, including any conditions or recommendations,
16 shall be in writing and submitted to the court and the
17 State at least 30 days prior to any hearing to insure
18 proper input from the State's Attorney of record in the
19 case and consideration by the court. The person or
20 facility rendering the outpatient care shall be required
21 to submit written reports every 90 days periodically
22 report to the Court on the progress of the defendant with
23 a copy provided to the State's Attorney of record in the
24 case. Such conditional release shall be for a period of
25 10 five years, unless the defendant, the person or
26 facility rendering the treatment, therapy, program or
27 outpatient care, or the State's Attorney petitions the
28 Court for an extension of the conditional release period
29 for an additional 5 three years. Upon receipt of such a
30 petition, the Court shall hold a hearing consistent with
31 the provisions of this paragraph (a) and paragraph (f) of
32 this Section, shall determine whether the defendant
33 should continue to be subject to the terms of conditional
34 release, and shall enter an order either extending the

1 defendant's period of conditional release for a single
2 additional 5 three year period or discharging the
3 defendant. In no event shall the defendant's period of
4 conditional release exceed 15 eight years. These
5 provisions for extension of conditional release shall
6 only apply to defendants conditionally released on or
7 after July 1, 1979. ~~However-the-extension-provisions-of~~
8 ~~Public-Act-83-1449-apply-only-to-defendants-charged-with~~
9 ~~a-forcible-felony.~~

10 (E) "Facility director" means the chief officer of
11 a mental health or developmental disabilities facility or
12 his or her designee or the supervisor of a program of
13 treatment or habilitation or his or her designee.
14 "Designee" may include a physician, clinical
15 psychologist, social worker, or nurse.

16 (b) If the Court finds the defendant subject to
17 involuntary admission or in need of mental health services on
18 an inpatient basis, the admission, detention, care, treatment
19 or habilitation, treatment plans, review proceedings,
20 including review of treatment and treatment plans, and
21 discharge of the defendant after such order shall be under
22 the Mental Health and Developmental Disabilities Code, except
23 that the initial order for admission of a defendant acquitted
24 of a felony by reason of insanity shall be for an indefinite
25 period of time. Such period of commitment shall not exceed
26 the maximum length of time that the defendant would have been
27 required to serve, less credit for good behavior except in
28 the case of an original charge of first degree murder, an
29 attempt to commit first degree murder, or a second degree
30 murder, before becoming eligible for release had he been
31 convicted of and received the maximum sentence for the most
32 serious crime for which he has been acquitted by reason of
33 insanity. The Court shall determine the maximum period of
34 commitment by an appropriate order. During this period of

1 time, the defendant shall not be permitted to be in the
2 community in any manner, including but not limited to
3 off-grounds privileges, with or without escort by personnel
4 of the Department of Human Services, unsupervised on-grounds
5 privileges, discharge or conditional or temporary release,
6 except by a plan as provided in this Section. In no event
7 shall a defendant's continued unauthorized absence be a basis
8 for discharge. Not more than 30 days after admission and
9 every 120 ~~60~~ days thereafter so long as the initial order
10 remains in effect, the facility director shall file a
11 treatment plan report in writing with the court and forward a
12 copy of the treatment plan report to the clerk of the court,
13 the State's Attorney, and the defendant's attorney, if the
14 defendant is represented by counsel, in the case of an
15 original charge of first degree murder, an attempt to commit
16 first degree murder, or a second degree murder to the
17 defendant's victim or to a person authorized by the defendant
18 under the Mental Health and Developmental Disabilities
19 Confidentiality Act to be sent a copy of the report. The
20 report shall include a statement ~~an opinion~~ as to whether the
21 defendant is currently subject to involuntary admission, in
22 need of mental health services on an inpatient basis, or in
23 need of mental health services on an outpatient basis. The
24 report shall also summarize the basis for those findings and
25 provide a current summary of the following items from the
26 treatment plan: (1) an assessment of the defendant's
27 treatment needs, (2) a description of the services
28 recommended for treatment, (3) the goals of each type of
29 element of service, (4) an anticipated timetable for the
30 accomplishment of the goals, and (5) a designation of the
31 qualified professional responsible for the implementation of
32 the plan. The report may also include unsupervised on-grounds
33 privileges, off-grounds privileges (with or without escort by
34 personnel of the Department of Human Services), home visits

1 and participation in work programs, but only where such
2 privileges have been approved by specific court order, which
3 order may include such conditions on the defendant as the
4 Court may deem appropriate and necessary to reasonably assure
5 the defendant's satisfactory progress in treatment and the
6 safety of the defendant and others.

7 (c) Every defendant acquitted of a felony by reason of
8 insanity and subsequently found to be subject to involuntary
9 admission or in need of mental health services shall be
10 represented by counsel in all proceedings under this Section
11 and under the Mental Health and Developmental Disabilities
12 Code.

13 (1) The Court shall appoint as counsel the public
14 defender or an attorney licensed by this State.

15 (2) Upon filing with the Court of a verified
16 statement of legal services rendered by the private
17 attorney appointed pursuant to paragraph (1) of this
18 subsection, the Court shall determine a reasonable fee
19 for such services. If the defendant is unable to pay the
20 fee, the Court shall enter an order upon the State to pay
21 the entire fee or such amount as the defendant is unable
22 to pay from funds appropriated by the General Assembly
23 for that purpose.

24 (d) When the facility director determines that:

25 (1) the defendant is no longer subject to
26 involuntary admission or in need of mental health
27 services on an inpatient basis; and

28 (2) the defendant may be conditionally released
29 because he or she is still in need of mental health
30 services or that the defendant may be discharged as not
31 in need of any mental health services; or

32 (3) the defendant no longer requires placement in a
33 secure setting;

34 the facility director shall give written notice to the Court,

1 State's Attorney and defense attorney. Such notice shall set
2 forth in detail the basis for the recommendation of the
3 facility director, and specify clearly the recommendations,
4 if any, of the facility director, concerning conditional
5 release. Within 30 days of the notification by the facility
6 director, the Court shall set a hearing and make a finding as
7 to whether the defendant is:

8 (i) subject to involuntary admission; or

9 (ii) in need of mental health services in the form
10 of inpatient care; or

11 (iii) in need of mental health services but not
12 subject to involuntary admission or inpatient care; or

13 (iv) no longer in need of mental health services;
14 or

15 (v) no longer requires placement in a secure
16 setting.

17 Upon finding by the Court, the Court shall enter its
18 findings and such appropriate order as provided in subsection
19 (a) of this Section.

20 (e) A defendant admitted pursuant to this Section, or
21 any person on his behalf, may file a petition for treatment
22 plan review, transfer to a non-secure setting within the
23 Department of Human Services or discharge or conditional
24 release under the standards of this Section in the Court
25 which rendered the verdict. Upon receipt of a petition for
26 treatment plan review, transfer to a non-secure setting or
27 discharge or conditional release, the Court shall set a
28 hearing to be held within 365 ±20 days. Thereafter, no new
29 petition may be filed for 365 ±20 days without leave of the
30 Court.

31 (f) The Court shall direct that notice of the time and
32 place of the hearing be served upon the defendant, the
33 facility director, the State's Attorney, and the defendant's
34 attorney. If requested by either the State or the defense or

1 if the Court feels it is appropriate, an impartial
2 examination of the defendant by a psychiatrist or clinical
3 psychologist as defined in Section 1-103 of the Mental Health
4 and Developmental Disabilities Code who is not in the employ
5 of the Department of Human Services shall be ordered, and the
6 report considered at the time of the hearing.

7 (g) The findings of the Court shall be established by
8 clear and convincing evidence. The burden of proof and the
9 burden of going forth with the evidence rest with the
10 defendant or any person on the defendant's behalf when a
11 hearing is held to review a petition filed by or on behalf of
12 the defendant. The evidence shall be presented in open Court
13 with the right of confrontation and cross-examination. If the
14 defendant has been charged with a first degree murder, an
15 attempt to commit first degree murder, or a second degree
16 murder, such evidence shall include, but is not limited to:

17 (1) whether the defendant appreciates the
18 criminality of his or her prior conduct that resulted in
19 the finding of not guilty by reason of insanity;

20 (2) the current state of the defendant's illness;

21 (3) what, if any, medications the defendant is
22 taking to control his or her mental illness;

23 (4) what, if any, adverse physical side effects the
24 medication has on the defendant;

25 (5) the length of time it would take for the
26 defendant's mental health to deteriorate if the defendant
27 stopped taking prescribed medication;

28 (6) the defendant's history or potential for
29 alcohol and drug abuse;

30 (7) the defendant's past criminal history;

31 (8) any specialized physical or medical needs of
32 the defendant;

33 (9) any family participation or involvement
34 expected upon release;

1 (10) the defendant's potential to be a danger to
2 himself, herself, or others; and

3 (11) any other factor or factors the court deems
4 appropriate.

5 (h) If the Court finds, consistent with the provisions
6 of this Section, that the defendant is no longer in need of
7 mental health services it shall order the facility director
8 to discharge the defendant. If the Court finds, consistent
9 with the provisions of this Section, that the defendant is in
10 need of mental health services, and no longer in need of
11 inpatient care, it shall order the facility director to
12 release the defendant under such conditions as the Court
13 deems appropriate and as provided by this Section. Such
14 conditional release shall be imposed for a period of 15 ~~five~~
15 years and shall be subject to later modification by the
16 Court as provided by this Section. If the Court finds
17 consistent with the provisions in this Section that the
18 defendant is subject to involuntary admission or in need of
19 mental health services on an inpatient basis, it shall order
20 the facility director not to discharge or release the
21 defendant in accordance with paragraph (b) of this Section.

22 (i) If within the period of the defendant's conditional
23 release, the Court determines, after hearing evidence, that
24 the defendant has not fulfilled the conditions of release,
25 the Court shall order a hearing to be held consistent with
26 the provisions of paragraph (f) and (g) of this Section. At
27 such hearing, if the Court finds that the defendant has
28 violated his or her conditional discharge, is otherwise
29 subject to involuntary admission or in need of mental health
30 services on an inpatient basis, it shall enter an order
31 remanding him or her to the Department of Human Services or
32 other facility. If the defendant is remanded to the
33 Department of Human Services, he or she shall be placed in a
34 secure setting unless the Court determines that there are

1 compelling reasons that such placement is not necessary.
2 Notwithstanding any other provision of this Section, a court
3 may, in its discretion, deny a defendant whose conditional
4 discharge is revoked due to violation of its conditions any
5 credit for any prior time served as involuntary admission or
6 on conditional discharge for purpose of satisfying the
7 maximum time for involuntary admission under this Act. If the
8 Court finds that the defendant continues to be in need of
9 mental health services but not on an inpatient basis, it may
10 modify the conditions of the original release in order to
11 reasonably assure the defendant's satisfactory progress in
12 treatment and his or her safety and the safety of others. In
13 no event shall such conditional release be longer than 15
14 eight years. Nothing in this Section shall limit a Court's
15 contempt powers or any other powers of a Court.

16 (j) An order of admission under this Section does not
17 affect the remedy of habeas corpus.

18 (k) In the event of a conflict between this Section and
19 the Mental Health and Developmental Disabilities Code or the
20 Mental Health and Developmental Disabilities Confidentiality
21 Act, the provisions of this Section shall govern.

22 (l) This amendatory Act shall apply to all persons who
23 have been found not guilty by reason of insanity and who are
24 presently committed to the Department of Mental Health and
25 Developmental Disabilities (now the Department of Human
26 Services).

27 (m) The Clerk of the Court shall, after the entry of an
28 order of transfer to a non-secure setting of the Department
29 of Human Services or discharge or conditional release,
30 transmit a certified copy of the order to the Department of
31 Human Services, and the sheriff of the county from which the
32 defendant was admitted. In cases where the arrest of the
33 defendant or the commission of the offense took place in any
34 municipality with a population of more than 25,000 persons,

1 the Clerk of the Court shall also transmit a certified copy
2 of the order of discharge or conditional release to the
3 proper law enforcement agency for said municipality provided
4 the municipality has requested such notice in writing.

5 (Source: P.A. 90-105, eff. 7-11-97; 90-593, eff. 6-19-98;
6 91-536, eff. 1-1-00; 91-770, eff. 1-1-01.)